

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Executive Director of the D.C. Board of Education, pursuant to the authority set forth in D.C. Code, 2001 edition, Sections 2-501, et seq., and 38-101, et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its July 21, 2004 Board meeting to amend Chapter 27 of the Board Rules, Title 5 of the D.C. Municipal Regulations, specifically §2701.3 as it relates to interscholastic athletic eligibility for special education students.

The emergency is necessitated by the need to promulgate policy for special education students receiving Level I through Level IV services by modifying 5 DCMR §2701.3(j) to include requirements for students receiving Level III and Level IV services. The emergency rulemaking took effect on July 21, 2004, following approval by the Board of Education. It shall expire within 120 days of its effective date or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Board of Education also gives notice of its intent to recommend final rulemaking action to adopt this emergency and proposed rulemaking in not less than thirty (30) days from publication of this notice in the *D.C. Register*.

Section 2701.3 is modified as follows:

...

- (j)
1. Students in grades nine (9) through twelve (12), in regular education and career development programs or in Level I and Level II programs of the continuum services available to special education students, shall have a grade point average of 2.0 ("C") as required by Chapter 22.
 2. Students in Level III and Level IV programs of the continuum of services available to special education students, who do not achieve the required 2.0 ("C") average each advisory may request a meeting of the Multidisciplinary Team (MDT) to review their services and determine whether there is justification for waiving the student's ineligibility. The MDT shall consider progress on the Individualized Educational Program (IEP) and attendance as factors for their consideration.

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, D.C. Board of Education 825 North Capitol Street, N.E., Suite 9108, Washington, D.C. 20002. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENTNOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Housing and Community Development, pursuant to the authority set forth in §252 of Public Law 99-154, the Tax Reform Act of 1986, as amended and Mayor's Order No. 87-72, hereby gives notice of his intent to amend, on an emergency basis, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, Title 10 of the District of Columbia Municipal Regulations (DCMR), Chapter 34, Low Income Housing Tax Credit Program (LIHTC). Specifically, the deletion of Subsection 3401.4 and the addition of Subsection 3406.

The purpose of the amendment is to (1) remove the provisions for an application fee in this section of the regulations and (2) designate a separate section for the establishment and collection of application fees, reservation fees, allocation fees, and monitoring fees.

The emergency action is necessary because the LIHTC program has helped finance over 10,000 units of rental housing, between 1987 and 2003, for families earning between 50 and 60 percent of the area median income. As the LIHTC program requires annual monitoring of the properties and income certification of the tenants assisted, the failure of DHCD, as the designated LIHTC allocation and compliance organization for the District of Columbia would mean that an estimated minimum of 800 households annually would be at risk of being homeless and not finding decent, safe and affordable housing. Additionally, the existing 10,000 units would be subject to recapture of the allocated LIHTCs placing these families at risk of homelessness.

The immediate establishment of these pivotal fees are necessary to the District of Columbia's ability to continue its Low Income Housing Tax Credit Program in full compliance with Title 42 of the Internal Revenue Code and thus the financial integrity of every LIHTC previously issued by the District of Columbia.

This emergency rule shall take effect immediately upon publication in the D.C. Register and shall expire 120 days from the effective date, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Section 3400 of Chapter 34 (Low Income Housing Tax Credit Program) of Title 10 DCMR, is amended as follows:

Subsection 3401.4 is deleted in its entirety.

A new Subsection 3406 is added to read as follows:

Program Fees

- 3406.1 Application Fee - The Department may establish an application fee as follows:
- (a) For non-profit developer applicants, the application fee shall not exceed two hundred dollars (\$200.00); and
 - (b) For other developer applicants, the application fee shall not exceed five hundred dollars (\$500.00)
- 3406.2 Reservation Fee - The Department may establish an reservation fee as follows:
- A reservation fee for each applicant shall be charged at a rate of one percent (1%) of the annual credit allocation.
- 3406.3 Allocation Fee - The Department may establish an allocation fee as follows:
- An allocation fee for each applicant shall be charged at a rate of two percent (2%) of the total annual tax credit allocation.
- 3406.4 Monitoring Fee - The Department may establish a monitoring fee as follows:
- A monitoring fee shall be charged to each project in an amount of at least Thirty-five Dollars (\$35.00) for each LIHTC unit of any LIHTC financed project per year of the LIHTC compliance period.

Section 3499 is amended to add the following definitions:

Compliance Period - Section 42 of the IRS code requires that units funded with the LIHTC program remain affordable for 15 years. To preserve affordability of units receiving LIHTC assistance, DHCD has added an additional 15 year extended use affordability period, for a total of 30 years. This action is required by Section 42.

Low Income Housing Tax Credit -

The Low Income Housing Tax Credit Program (LIHTC), created pursuant to section 42 of the Internal Revenue Code is a subsidy for the development and operation of affordable rental housing offered through the Internal Revenue Tax Code. The LIHTC program offers a credit to offset the tax liability of owners and investors in eligible low-income rental housing developments.

The Tax Reform Act of 1986, as amended, established the federal Low Income Housing Tax Credit Program ("LIHTC"), to encourage private investment for the construction and rehabilitation of affordable housing to benefit low and moderate income individuals and families. Section 42 of the Internal Revenue Code sets forth the rules and regulations of the LIHTC Program and mandates the compliance and monitoring activities required by states and the District of Columbia. DHCD, by Mayor's Order 87-72, is the District's delegated agency with the authority and responsibility of administering the LIHTC Program.

Reservation fee – is collected when an eligible project meets the 10 percent spending threshold required under Section 42. At this time a reservation of LIHTCs is set-aside for the particular project, subject to its completion and compliance with LIHTC requirements.

Allocation fee - is collected when an eligible LIHTC project is placed in service and has submitted its cost certification detailing the project costs eligible to be included in the LIHTC basis.

Monitoring fee – is collected annually for each available LIHTC unit during the LIHTC and extended use compliance period,

D.C. OFFICE OF PERSONNEL**NOTICE OF EMERGENCY RULEMAKING**

The Interim Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*) (2001), as amended on a temporary basis by D.C. Law 15-158, the Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2004 (the Act), effective May 18, 2004 (D.C. Act 15-393; 51 DCR 3397), or any similar subsequent legislation, hereby gives notice of the adoption of the following emergency rules. These rules explain the requirements for the payment of an active duty pay differential to District government employees who have been called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom. The Act provides that implementing rules must be issued within thirty (30) days of its effective date. The utilization of emergency rulemaking is the only available means of complying with this requirement and, thereby, providing for the continuation of payment of the differential authorized by the Act for eligible employees. The Notice of Emergency Rulemaking published at 51 DCR 3481 (April 2, 2004) expired on July 12, 2004. Therefore, to ensure the welfare of the public, action was taken on July 15, 2004 to adopt the following rules on an emergency basis effective July 15, 2004. These rules will remain in effect for up to one hundred twenty (120) days from July 15, 2004 unless earlier superseded by another rulemaking notice.

CHAPTER 11**CLASSIFICATION AND COMPENSATION**

Section 1155 is amended to read as follows:

- 1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI
FREEDOM PAY DIFFERENTIAL**
- 1155.1 Any full-time permanent employee, term employee, or an employee on a
Temporary Appointment Pending Establishment of a Register (TAPER
appointment) who serves in a reserve component of the armed forces and
who has been ordered to active duty, or was retained for duty as a result of**

Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

- 1155.2 An employee as described in § 1155.1 shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in § 1155.9, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.
- 1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.
- 1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee's District government basic pay reduced by the employee's basic military pay.
- 1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee's department or agency head.
- 1155.6 The period of entitlement to the pay differential shall not exceed:
- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or
 - (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.

- 1155.7 The pay differential shall not be payable for any period following the employee's release from active duty and the employee's return to his or her District government position.
- 1155.8 The pay differential shall not be payable for any days for which the employee received pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.
- 1155.9 In making application for the pay differential, the employee shall:
- (a) Provide a copy of the military orders activating the employee for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;
 - (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
 - (c) Provide all military pay documentation required to calculate the differential amount.
- 1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in § 1155.1, out of the agency's funds or appropriations then currently available for salaries and expenses.

1155.99 DEFINITIONS

Active duty – full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

Armed forces – has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

Basic military pay – the basic pay under 37 U.S.C. § 204.

Basic pay – the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

Employee – any full-time permanent employee, term employee, or an employee on a TAPER appointment who serves in a reserve component of the United States Armed Forces and who has been called to active duty as a result of the Operation Enduring

Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

Operation Enduring Freedom – the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

Operation Iraqi Freedom – the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

Reserve component – has the meaning prescribed in 37 U.S.C. § 101(24).